

1 BEFORE THE LABOR COMMISSIONER
2 OF THE STATE OF CALIFORNIA

3 DOROTHY STRANGE)

4 Plaintiff)

5 vs.)

6 DANKA CORPORATION)

7 Defendant)

Case No. 10-45393

ORDER, DECISION, OR AWARD
OF THE LABOR COMMISSIONER

8
9 BACKGROUND

10 The plaintiff filed an initial claim with the Labor Commissioner's office on February
11 26, 2002. The complaint raises the following allegations:

12 1. That the Plaintiff is due \$27,676.32 in commissions.

13 2. That the Plaintiff is due waiting time penalties pursuant to Labor Code § 203.

14 A hearing was conducted in San Diego, California on October 15, 2002, before the
15 undersigned hearing officer designated by the Labor Commissioner to hear this matter.
16 The Plaintiff appeared in pro per. The Defendant was represented by Jacqueline M.
17 Gayle-Kelly, Director of Corporate Human Resources and Diversity.

18 Due consideration having been given to the testimony, documentary evidence, and
19 arguments presented, the Labor Commissioner hereby adopts the following Order,
20 Decision or Award.

21
22 FINDINGS OF FACT

23 The Defendant is engaged in the resale, installation and servicing of copiers and
24 office equipment. The Plaintiff has been employed by the Defendant as a sales
25 representative, responsible for government sales, since June 8, 2001.

26 Effective October 1, 2001, the Defendant implemented a written compensation plan
27 for its sales staff with various incentives designed to increase gross profits through

1 profitable service and hardware sales. Under the terms of this plan, sales representatives
2 would earn one hundred percent (100%) of the gross profit generated by sales through the
3 company's equipment manufacturers. The complete plan entitled Sales Compensation
4 Policies and Operating Procedures was presented to the sales representatives on October
5 5, 2001. On October 25, 2001, the Plaintiff signed an acknowledgment of receipt of the
6 compensation plan.

7 On October 12, 2001, the Plaintiff obtained a purchase order from the United States
8 Navy for \$169,922.28 in sales and services. Under the compensation plan of October 1,
9 2001, the Plaintiff would have been entitled to a commission of \$55,352.64. The equipment
10 sold by the Plaintiff was installed at the Naval Aviation Depot on November 12, 2001.

11 On October 26, 2001, after the sale to the Navy but prior to the installation, the
12 Defendant modified the compensation plan by reducing commissions on sales to fifty
13 percent (50%) of the gross profit. Based on this modification, the Plaintiff was paid a
14 commission of \$27,676.32 for the sale.

15 Under both plans, the "sales incentive earnings event" is specified to occur on the
16 installation date.

17 The Plaintiff agrees that commissions on sales made after November 1, 2001 could
18 be paid at fifty percent (50%) of the gross profit but argues that she should have been paid
19 for the Naval Aviation sale under the terms of the compensation agreement in effect at the
20 time of the sale.

21 It is the Defendant's position that commissions on sales are not earned or "vested"
22 until installation. Therefore, the applicable commission rate would be dictated by the
23 compensation plan in effect at the time of the installation.
24
25
26
27

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27

2
3
4
5
6
7
8

9
10
11
12
13

14
15
16
17

18
19
20
21
22

23
24
25

26
27

1 Labor Code § 203 provides for a penalty if an employer willfully fails to pay wages
2 to a terminated employee in accordance with Labor Code §§ 201 and 202. Inasmuch as the
3 Plaintiff remains employed by the Defendant, waiting time penalties are not applicable.
4

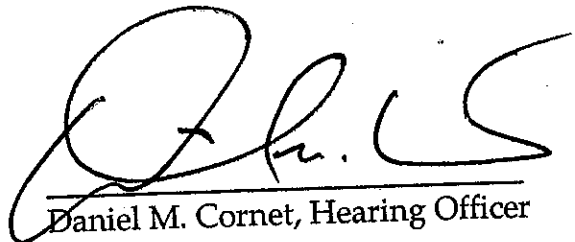
5 CONCLUSION

6 For all of the reasons set forth above, IT IS HEREBY ORDERED that:

7 1.The Plaintiff is entitled to receive \$27,676.32 in commissions.

8 2. Interest in the amount of \$2,615.29 has accrued on the wages due, pursuant to
9 Labor Code § 98.1.

10
11
12 Dated: October 23, 2002

13 
14 Daniel M. Cornet, Hearing Officer
15
16
17
18
19
20
21
22
23
24
25
26
27